

**APPLICANT:**  
**Pais Properties, LLC**

**REQUEST:** An enlargement and substitution  
of a non-conforming use

**HEARING DATE:** January 31, 2005

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5463**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Pais Properties, LLC

**LOCATION:** 2106 Pulaski Highway -- Edgewood  
Tax Map: 65 / Grid: 2F / Parcel: 557  
First Election District (1<sup>st</sup>)

**ZONING:** B3 / General Business District

**REQUEST:** An enlargement of a non-conforming use, pursuant to Section 267-21 and  
substitution of one non-conforming use for another pursuant to 267-  
20A.(3)

#### **TESTIMONY AND EVIDENCE OF RECORD:**

For the Applicant testified Alex Pais, who identified himself as a member of Pais Properties, LLC, which owns 2106 Pulaski Highway, the subject property. Mr. Pais testified that his group purchased the subject property approximately 6 to 7 months ago. The previous use had been an adult bookstore. The property is improved by an older building and a parking lot. Since his group purchased the property it has been cleaned-up, the building has been improved by a new roof, and the building's façade has been improved. Presently the property is vacant, pending this application.

The Applicant wishes to convert the subject property to a used car lot facility. The Applicant operates a number of other used car lot facilities within Harford County, and is experienced in the business.

Mr. Pais testified that because of the location, the size of the building, and the size of the lot, most permitted uses allowed in the building's existing zoning classification are practically excluded.

The hours of operation of the proposed facility will be 9:00 a.m. to 7:00 p.m. daily. Lighting would be directed away from adjoining properties. No repairs will be conducted on the site. The Applicant has a central repair facility where work would be performed on the vehicles which would then be taken to the subject property. Mr. Pais anticipates that the use would generate no unusual noise, vibration, glare or odors.

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Mr. Pais' group desires to expand the existing parking lot back to the rear property line in order to facilitate the proposed use. Mr. Pais indicated that other properties along the Route 40 corridor in the area of the subject property have similar setback issues. A property two parcels down from the subject property was given a similar approval in November 2003 (Case No. 5369).<sup>1</sup>

Mr. Pais indicated the subject property backs up to the Lands of the United States Government, which is used as a water treatment facility. The proposed use would have no adverse impact on the neighboring properties or adjoining property owners.

Next testified David Rudisell, offered and accepted as an expert civil engineer. Mr. Rudisell indicated that the subject property is zoned B3, which allows a high intensity development. The Harford County Land Use Plan also anticipates that the property will be used for the type of facility proposed by the Applicant. The property also lies within the Route 40 Commercial Revitalization District.

Mr. Rudisell described the history of the property. The lot was created in approximately 1944, with the existing structure having been built in approximately 1929. Accordingly, both the lot and the building are non-conforming in that they pre-date zoning.

A used car facility, in Mr. Rudisell's opinion, if built upon the subject property would have virtually no usable area because of the necessity of complying with the existing setbacks. The unusual configuration of the subject property is similar to other lots along the same Route 40 corridor. Many of those lots suffer similar setback constraints because of their unusual configuration.

Mr. Rudisell also indicated that the Lands of the United States Government, which are located behind the subject property, are unlikely to ever be developed, particularly for residential uses. That property is presently forested, with steep slopes, and surrounds a water treatment facility.

The Applicant will be required to improve the frontage of the subject property along Maryland Route 40. This will necessitate the removal of some black top in that area, as well as the installation of a permanent curb and gutter to State Highway Administration standards. The net result will be a reduction of the impervious surface on the property.

According to Mr. Rudisell, somewhat less than 800 square feet of new parking will be added to the rear of the property, if the request is granted.

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<sup>1</sup> Case No. 5369 allowed an addition to a building to impact within the required 40 foot rear yard setback by 31 feet. The case also requested, and approval was granted for a variance in order to extend a non-conforming use. That case involved a motor vehicle repair shop.

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Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated that the Applicant's request meets or exceeds all applicable standards. The requested use is a permitted use in a B3 District. The Applicant's request is for an expanded parking area, which will impact the rear property setback. The Applicant's desire to use the property as a used car lot is an appropriate use for the property and for its zoning district. The request does not impact either height or lot coverage restrictions. Storm water management requirements must be complied with, and will be reviewed at the time of the Development Advisory Committee review.

Mr. McClune further stated that the improvement of the lot frontage along Route 40 will greatly help the existing traffic conditions. The United States Government property to the rear of the subject property is entirely wooded and any future development should not come close to the subject property because of the steep slopes on the United States Government property.

Mr. McClune sees no adverse impact to any other neighboring property.

There was no evidence or testimony presented in opposition to the request.

### **APPLICABLE LAW:**

Section 267-21 of the Harford County Code provides:

*"The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:*

- A. The proposed extension or enlargement does not change to a less-restricted and more intensive use.*
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.*
- C. The enlargement or extension does not violate the height or coverage regulations for the district.*
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.*
- E. The limitations, guides and standards set forth in Section 267-9I, Limitations, Guides and Standards, are considered by the Board."*

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Section 267-20A(3) of the Harford County Code provides:

*“(3) When authorized by the Board, one non-conforming use may be substituted for another non-conforming use.”*

Section 267-9I of the Harford County Code is also applicable to this request and will be discussed in further detail below.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject property is a shallow, 2.78 acre parcel located on Route 40 close to its intersection with Edgewood Road. It lies in an intensely used and heavily trafficked area of the County.

The property is improved by a 2,500 square foot building, approximately 80 years old, and used most recently as an adult book store. Most of the frontage of the lot is paved, although its road frontage along Route 40 does not comply with current state road access standards. The property also abuts Lands of the United States Government, a parcel of property which has long been used as a water treatment plant for the Edgewood area of Aberdeen Proving Ground.

The Applicant proposes to use the property for a used car sales lot. This use is allowable in the property's B3 Zoning District, and is an appropriate one for the area in which it is located. However, in order to fit a used car lot on the property, the Applicant needs to expand the existing parking to the rear of the property, which would necessitate an additional 800 square feet of paving. The expansion of parking would violate the rear setback. Accordingly, the Applicant requests an enlargement of the existing non-conforming use of the property and the substitution of one non-conforming use for another.

It has been amply demonstrated, and is so found, that the lot itself is non-conforming. The structure itself, being over 80 years old, also pre-dates zoning. A review of the site plan filed with the application shows that the present building impacts the rear yard setback by almost 20 feet, coming to within 3-1/2 feet of the rear property line. However, as indicated above, this is an allowable non-conforming use of the property given the age of the building and the date of the creation of the lot.

The expansion of the impact of the rear yard setback by allowing additional parking to be installed is a seemingly harmless change to the existing layout of the property, and would have no identifiable adverse impact on any adjoining property owner. Furthermore, the Applicant will be substantially improving the property by complying with State Highway access requirements which will include the installation of curb and gutter, the removal of some impervious surface from the front of the property, and the installation of a single access point to the subject property. By any measure, the Applicants change in the property will be a beneficial one to the area and the County as a whole.

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Nevertheless, despite a clearly supported finding of no adverse impact the request must be reviewed in light of the requirements of Section 267-21, as follows:

*“The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions. Provided that:*

*A. The proposed extension or enlargement does not change to a less-restricted and more intense use.*

The proposed extension of the parking lot will not change the proposed use of the property. The proposed use, a used car sales facility, is not a nonconforming use. It is a principle permitted use in its B3 District.

*B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.*

The enlargement of the parking area will not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity. The entire property is non-conforming in that it was created and used well before the creation of zoning.

*C. The enlargement or extension does not violate the height or coverage regulations for the district.*

The enlargement does not violate height or coverage requirements.

*D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.*

For reasons discussed above, the enlargement will have no adverse impact.

*E. The limitations, guides and standards set forth in Section 267-9I, Limitations, guides and standards, are consider by the Board.*

These are discussed in detail below.

Furthermore, the Board has the authority to substitute one non-conforming use for another, pursuant to Section 267-20A(3). The Applicant is not substituting a non-conforming use for another, except to the extent it requests to expand the parking area for what will be a principal permitted use. However, to the extent the Applicant requests a ruling on this issue, the Applicant’s request will be granted.

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Furthermore, the application must be reviewed in light of Section 267-9I of the Harford County Code, Limitations, Guides and Standards. They are discussed as follows:

*Section 267-9(I):*

*(1) The number of persons living or working in the immediate area.*

As discussed above, the proposed used auto sales facility is compatible with other uses in the area. It will not have an adverse impact on the number of persons living or working in the area. It should, in fact, appear to contribute to an increase in the commercial viability of the Edgewood Route 40 corridor.

*(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The frontage along Route 40 will be improved by the Applicant. As such, the impact on of the use on the subject property on Route 40 traffic will be improved.

*(3) The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed use and improvements are compatible with the intent of the Route 40 Commercial Revitalization District.

*(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed use should generate no such impact.

*(5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Edgewood, Abingdon and Joppa Volunteer Fire Companies will provide fire and emergency protection. The subject property is on public water and sewer facilities. A company of the Applicant's choice shall handle trash collection.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is fully compatible with the Harford County Master Land Use Plan, and with the present uses in the neighborhood.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed project is consistent with the Harford County Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The subject property is located adjacent to the Lands of the United States Government which also contains a water supply and filtration system for the Edgewood area of Aberdeen Proving Ground. The proposal, however, should have no identifiable impact on these potentially environmentally sensitive areas.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

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**CONCLUSION:**

For the above reasons, it is recommended that the proposed relief be granted, subject to the following:

1. That a detailed site plan shall be submitted to the Harford County Department of Planning and Zoning for review and approval through the Development Advisory Committee.
2. That the Applicant obtains all necessary permits and inspections for improvements to the existing building and property.

Date: February 24, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner